

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

04/30/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000693

FILED: \_\_\_\_\_

STATE OF ARIZONA

F TYLER RICH

v.

REINHOLD HEINRICH MARSONER

MICHAEL E KRANITZ

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 5918848

Charge: 1. DUI ALCOHOL  
2. DUI AC OVER .10

DOB: 05/25/51

DOC: 07/26/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on April 3, 2002, and this Court has considered

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and reviewed the record of the proceedings from the Phoenix City Court, and the Memorandum submitted by the parties.

The first issue raised by Appellant concerns the trial judge's denial of Appellant's Motion for Judgment of Acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure. A judgment of acquittal is only required when there is no "substantial evidence to warrant a conviction."<sup>1</sup> When reviewing the sufficiency of the evidence, an appellate court must not reweigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>2</sup> Evidence should be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>3</sup> If there are conflicts in the evidence, an appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.<sup>4</sup> The Arizona Supreme Court has explained in State v. Tison<sup>5</sup> that "substantial evidence" means:

More than a scintilla and is such proof that a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>6</sup>

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<sup>1</sup> State v. Doss, 192 Ariz. 408, 966 P.2d 1012 (App. 1998).

<sup>2</sup> State v. Guerra, 161 Ariz. 289, 78 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980).

<sup>3</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d (1982).

<sup>4</sup> In re Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77 P.490 (1889).

<sup>5</sup> Supra.

<sup>6</sup> Id. at 533, 633 P.2d at 362

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In this case substantial evidence concerning a "deprivation period" was presented through the testimony of Officer Tieman wherein the officer testified that he had handcuffed Appellant behind his back to begin the deprivation period.<sup>7</sup> The officer explained:

Before I can get a breath test I have to make sure that person's deprived of placing anything in their mouth. They're not allowed to smoke, drink, or chew any bubble gum. So I handcuff them behind their back so that they can't reach their mouth. And then as long as they don't throw up or bring up any stomach contents between the time that they're handcuffed and the time we get to the breath testing instrument, then the deprivation period can include that part of transportation.<sup>8</sup>

No evidence was presented that Appellant vomited or brought up any contents from his stomach while being transported. This Court specifically finds substantial evidence exists and was presented to the jury in support of the charges for which Appellant is convicted.

Secondly, the Appellant contends that the trial court erred in denying his Motion to Dismiss or in the Alternative, to Suppress the Breath Test Results. At the conclusion of oral argument on the Appellant's motion on May 7, 2001, the trial judge found:

...what you're asking the court to do is to hold the State to a standard that's higher than the one that the Legislature has held them to. They keep more data than they are required to keep and now because they don't have it they should suffer the consequences to that. I think

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<sup>7</sup> R.T. of July 13, 2001, at pages 74-75.

<sup>8</sup> Id. at page 74.

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a *prima facie* case is a *prima facie* case. And I think that you've acknowledged that they meet their *prima facie* case under the statute; that is to show that the instrument was operating properly and accurately based upon before and after calibration checks and before and after quality insurance checks.

And I think the fact that there is data missing, the fact that there is no explanation for the missing data, I think that presents the Defendant with an opportunity to challenge the validity of this particular test... .

And it appears to me that this is not a due process violation. It's not one that would require suppression, but it would require one that suggests to the jury that this data would have been helpful to the defense and the fact that the State no longer has it is something they can certainly consider in reaching their verdict. So I'm going to deny the Motion to Suppress, leaving open the issue as to whether or not you're entitled to a Willits instruction at trial.<sup>9</sup>

This Court must view the facts heard by the trial court in a light most favorable to upholding the trial judge's ruling, and this Court must resolve all reasonable inferences against the Appellant.<sup>10</sup> A trial judge's ruling on the admissibility of evidence must not be overturned on appeal without a finding that the trial judge abused his or her discretion.<sup>11</sup>

The trial judge in this case denied Appellant's Motion to Dismiss/Motion to Suppress finding no due process violation.

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<sup>9</sup> R.T. of May 7, 2001 at pages 10-11.

<sup>10</sup> *State v. Guerra*, Supra.

<sup>11</sup> *State v. Morales*, 170 Ariz. 360, 824 P.2d 756 (App. 1991).

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That conclusion appears to be required by State v. Youngblood<sup>12</sup>,  
wherein the Arizona Supreme Court held that,

... absent bad faith on the part of the  
State, the failure to preserve  
evidentiary material which could have  
been subjected to tests, the results of  
which might have exonerated the defendant,  
does not constitute a denial of due process  
of law under the Arizona Constitution.<sup>13</sup>

This Court finds no error or abuse of discretion by the  
trial judge in denying Appellant's Motion to Dismiss/Motion to  
Suppress.

IT IS THEREFORE ORDERED affirming the findings of guilt and  
sentences imposed in this case.

IT IS FURTHER ORDERED remanding this matter back to the  
Phoenix City Court for all future and further proceedings.

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<sup>12</sup> 173 Ariz. 502, 844 P.2d 1152 (1993).

<sup>13</sup> Id., 173 Ariz. at 508, 844 P.2d at 1158.